

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

PAUL J. MARTINEZ,

Plaintiff,

v.

No. CIV 09-453 LH/LFG

MICHAEL J. ASTRUE,
Commissioner of the
Social Security Administration,

Defendant.

**REPORT AND RECOMMENDATION THAT
CASE BE DISMISSED, WITHOUT PREJUDICE¹**

THIS MATTER is before the Court *sua sponte*. On May 8, 2009, Plaintiff Paul J. Martinez, who initially was represented by counsel, filed a complaint against Defendant. [Doc. 1.] On October 28, 2009, the Court set the briefing schedule for Plaintiff's motion to reverse or remand. [Doc. 13.] Plaintiff requested and received several extensions to file his motion to reverse. [Doc. Nos. 15, 17.]

On April 5, 2010, Plaintiff's attorney filed an unopposed motion to withdraw as counsel and asked that Plaintiff be allowed to secure new counsel or proceed *pro se*. [Doc. 18.] On April 14, 2010, the Court granted counsel's request to withdraw but expressly warned Plaintiff that failure to prosecute this action, should he proceed *pro se*, could result in dismissal of the action. "[A] plaintiff *pro se* must abide by the pertinent federal rules of civil procedure" "[I]f Martinez does not file

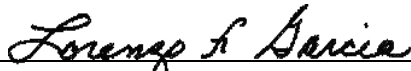
¹Within fourteen (14) days after a party is served with a copy of these findings and recommendations, that party may, pursuant to 28 U.S.C. § 636(b)(1), file written objections to such findings and recommendations. A party must file any objections with the Clerk of the U.S. District Court within the fourteen-day period allowed if that party wants to have appellate review of the findings and recommendations. If no objections are filed, no appellate review will be allowed.

his motion to reverse or remand by the amended deadline for doing so, the proceeding could be dismissed for failure to prosecute.” [Doc. 18.]

As of this date, no counsel has filed an appearance on behalf of Martinez, and Martinez failed to file a motion to reverse or remand by the amended deadline of May 5, 2010.² Moreover, he did not request or obtain another extension of time to file his motion. Thus, the Court recommends that the entire proceeding be dismissed, without prejudice, for failure to prosecute. *See Olsen v. Mapes*, 333 F.3d 1199, 1204 n. 3 (10th Cir. 2003) (“Although the language of Rule 41(b) requires that the defendant file a motion to dismiss, the Rule has long been interpreted to permit courts to dismiss actions *sua sponte* for a plaintiff’s failure to prosecute or comply with the rules of civil procedure or court’s orders.”) (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31, 82 S.Ct. 1386 (1962)).

Recommendation

The undersigned Magistrate Judge recommends that this action be dismissed, without prejudice, for failure to prosecute and that judgment be entered in favor of Defendant.



Lorenzo F. Garcia
United States Magistrate Judge

²This deadline has been amended three times.